BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL FROM THE DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF J.L.	)	
	)	OAH No. 05-0735-PER
	)	Div. R&B No. 2005-004

DECISION AND ORDER ON SUMMARY ADJUDICATION

I. Introduction

J.L. appeals a decision of the Division of Retirement and Benefits ("the division") regarding the calculation of her monthly benefit upon retirement. Ms. L. moved for summary adjudication, and both parties provided thorough briefing. The sole issue raised by this appeal concerns the definition of the phrase "average monthly compensation" as used in a Public Employees' Retirement System (PERS) statute.[1] In fact, it concerns only one small part of the definition: the meaning of "months, including fractional months," by which compensation for a given period is divided to calculate an average monthly compensation figure. Because there are no material fact in dispute, this issue can be resolved through summary adjudication.

Ms. L.'s appeal highlights the difficulty of reconciling the division's interpretation of the statutory phrase with the statute's apparent plain meaning. The division's long-standing practice of calculating retirement benefits for certain part-time employees may be at odds with the statute, providing some retirees with more generous benefits than the statute provides for. Ms. L.'s interpretation would provide even greater benefits for these employees. This decision discusses the division's current method of calculating benefits as part of the statutory analysis, but it does not ultimately reach a decision on whether the division's interpretation is correct. The issue is whether the division erred by rejecting Ms. L.'s even more generous reading of the statute. Because Ms. L.'s proffered interpretation is incorrect, the division did not err by rejecting it.

II. Facts

Ms. L. accrued a number of years of service in the Teachers' Retirement System.[2] Later, she began working as an attorney for the state.[3] Because her income as an assistant attorney general exceeded her earnings as a teacher, she made an irrevocable election under AS 14.25.125(d) to

[1] *See* Ms. L.'s November 28, 2005 Brief at pp. 1-2; *accord* Ms. L.'s December 30, 2005 Reply Brief at pp. 1-4 (reiterating that the appeal is about the "average monthly compensation" calculation and stating that the method of calculating credited service is not at issue). Ms. L. has waived a reliance theory she initially raised. Appellant's Reply Brief at 2, fn. 1.

[2] *Id.* at 1 & 3.

[3] *Id.* at 3.

substitute "average monthly compensation" as it is defined in AS 39.35.680 for "average base salary divided by twelve" when calculating her monthly retirement benefit.

Ms. L. has worked for the state both as a part-time and full-time employee. Her years of service are as follows:

October 27, 1972 - February 15, 1973:	full-time
January 7, 1985 - May 15, 1985:	full-time
June 17, 1985-June 30, 1985:	part-time
November 2, 1992 - June 30, 1995:	full-time
July 1,1995 - October 13,1996	part-time
October 14, 1996 - June 30, 2004	full-time
July 1, 2004 - September 16, 2005	part-time
September 17, 2005 - January 1, 2006	part-time
January 2, 2006 - present:	full-time

Ms. L. has not yet retired. In her most recent pleading, she indicated that she intends to retire on September 1, 2006.[4] The amount of compensation that Ms. L. has earned during the periods she has worked is not in dispute.[5]

The division has explained its methodology for calculating the retirement benefit for part-time employees.[6] Part-time employees were not eligible for participation in PERS until 1976.[7] When the legislature extended the benefit to part-time employees, the division established its current method of calculating benefits and programmed its computers accordingly.[8] The methodology has not been reviewed since then, and it has never been described in a regulation or a standard operating procedure.[9] The division's practices have been consistent with the argument it advances regarding the correct method of calculating benefits.

III. Discussion

When facts are not in dispute, but legal issues are, an evidentiary hearing is generally not necessary. In the context of administrative decisions, the Alaska Supreme Court has held that

[4] Id.
[5] *L.'s* November 28, 2005 Brief at pp. 2 (confirming that Ms. L Q p does not dispute the "numerator of the fraction" because the "compensation earned can be readily ascertained from her pay stubs").
[6] *See generally* Lea aff. & attachments to it.
[7] *See* Exhibit C to Division's December 19, 2005 Brief.
[8] *See* Division's December 19, 2005 Brief at pp. 1-8 and exhibits cited therein.
[9] *Id*.

"there is no right to an evidentiary hearing in the absence of a factual dispute."[10] In this case, neither party has disputed the facts asserted by the other party, or alleged the existence of facts contradicting those alleged by the other party. While the parties dispute the meaning and correct application of the law to the facts, no dispute about any of the material facts exists.[11] The purely legal issue presented by the difference over the meaning of "months, including fractional months," therefore, is being decided based on the briefing of the parties and the documentary evidence in the record.

While Ms. L. disputes the correctness of the division's methodology based on her differing interpretation of a phrase in a statutory definition, she does not dispute that the division has correctly portrayed its current and past practices. She disputes the administrator's August 18, 2005 denial of her request for an alternate calculation method. Ms. L. gave two reasons for her appeal. First, she does "not believe that average monthly compensation was calculated consistent with applicable statutes."[12] Second, she asserts that she "relied upon statements that part-time work would be annualized so there would not be a penalty for working part-time."[13] Only the first is the subject of this decision.

A. Statutory Formula for Calculating a Retiree's Monthly Benefit

The parties agree that Ms. L.'s retirement benefit is properly calculated by using the following statutory formula contained in AS 39.35.370(c):

> The monthly amount of a retirement benefit.. .is
>
> (1) two percent of the average monthly compensation times all years of service before July 1, 1986, and for years of service through a total of 10 years; plus
>
> (2) two and one-quarter percent of the average monthly compensation times all years of service after June 30, 1986, over 10 years of total service through 20 years; plus
>
> (3) two and one-half percent of the average monthly compensation times all years of service after June 30, 1986, over 20 years of total service.

[10] *Church v. State of Alaska, Department of Revenue,* 973 P.2d 1125 (Alaska 1999), *citing Human Resources Co. v. Alaska,* 946 P.2d 441,445 n.7 (Alaska 1997), *Douglas* v. *State,* 880 P.2d 113, 117 (Alaska 1994) and *Smith v. State,* 790 P.2d 1352, 1353 (Alaska 1990).

[11] Ms. L.'s assertion at footnote 2 of her opening brief, to the effect that disputed facts may exist, and an evidentiary hearing may be necessary, on the issue of reliance if summary adjudication in her favor is not granted will be taken up in a status conference to be convened later.

[12] September 6, 2005 Notice of Appeal.

[13] Id.

For purposes of calculating the retirement benefit, "average monthly compensation" is a defined term of art representing the factor in the benefit equation that state employees often refer to as their "three-year high." The term is statutorily defined as follows:

> "average monthly compensation" means the result obtained by dividing the compensation earned by an employee during a considered period by the number of months, including fractional months, for which compensation was earned; an employee must have at least 115 days of credited service in the last payroll year in order for that year to be used as part of the consecutive payroll years; the considered period consists of (A) for employees first hired before July 1, 1996, the three consecutive payroll years during the period of credited service that yield the highest average.. . .[14]

In this calculation, "compensation" is defined as,

> the remuneration earned by an employee for personal services rendered to an employer, including employee contributions under AS 39.35.160 , cost-of-living differentials only as provided in AS 39.35.675 , payments for leave that is actually used by the employee, the amount by which the employee's wages are reduced under AS 39.30.150 (c), and any amount deferred under an employer-sponsored deferred compensation plan, but does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers' compensation payments, or payments for leave not used by the employee whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins; for a member first hired on or after July 1, 1996, compensation does not include remuneration in excess of the limitations set out in 26 U.S.C. 401(a)(17) (Internal Revenue Code);

An employee's monthly retirement benefit can be expressed algebraically as follows:

> Monthly Retirement Benefit =
>
> [.02(Average Monthly Compensation)(first ten years of credited service)]
> + [.0225(Average Monthly Compensation)(second ten years of credited service)]
> + [.025(Average Monthly Compensation)(years of credited service over 20)]

Thus, the monthly benefit is based on a formula with three components: the percentage multipliers (2%, 2.25%, and 2.5% for the first ten, second ten, and subsequent years of credited service, respectively), the years of credited service, and Average Monthly Compensation. Average Monthly Compensation is calculated as a fraction, with "compensation earned during the three consecutive payroll years during the period of credited service that yield the highest average" as the numerator, and "number of months, including fractional months, for which compensation was earned" as the denominator, thus:

compensation earned during the three consecutive payroll years during the
period of credited service that yield the highest average
number of months, including fractional months, for which compensation was earned

The parties agree that the above fractional expression correctly characterizes the manner in which the statute requires average monthly compensation to be calculated. Further, they agree that the numerator is calculated by simply adding up all the compensation the employee earned during whichever period is used to calculate average monthly compensation. The dispute is over the denominator, and this dispute can be resolved by determining the correct meaning of "number of months, including fractional months, for which compensation was earned" as the phrase is used in AS 39.35.680(4).

B. Construction of the Disputed Statutory Term

Under Alaska law, a statute is interpreted "according to reason, practicality, and common sense, considering the meaning of its language, its legislative history, and its purpose."[15] The Alaska Supreme Court has stated that

> we have rejected the plain meaning rule; in interpreting a statute, we consider its language, its puipose, and its legislative history, in an attempt to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others. The plainer the language of the statute, the more convincing the evidence of contrary legislative intent must be. We will ignore the plain meaning of an enactment...where that meaning leads to absurd results or defeats the usefulness of the enactment.[16]

Thus, the inquiry into the meaning of a phrase in a statute might not stop at a plain language interpretation of the words and phrases, but it should start there. When construing statutes, the provisions of AS 01.10.040 - 01.10.090 must be observed unless the construction would be inconsistent with the manifest intent of the legislature.[17] AS 01.10.040(a) states that

> Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

The PERS statutes and regulation do not define "number of months, including fractional months, for which compensation was earned." No reported Alaska cases or general statutes define the either the full phrase or the contested part (i.e., "months, including fractional months"). But in

[14] AS 39.35.680(4).
[15] *Wilson* v. *Dep't of Corrections,* Slip Op. 5974, p. 5 (Alaska January 20, 2006).
[16] *Martinez v. Cape Fox,* 113 P.3d 1226 (Alaska 2005) (citations omitted).
[17] AS 01.10.020.

Alaska's statutes, the word "month" means "a calendar month unless otherwise expressed."[18] Also, use of the word "including" causes the contested part of the phrase to be read "months, including but not limited to fractional months."[19] The word "fractional" is used many times in Alaska's statutes, but no general statutory definition has been given to the word and reported Alaska cases do not define it.

The parties have not suggested that the inclusion of "fractional months" in the phrase "months, including fractional months" significantly affects the interpretation of the phrase. The lack of a statutory definition for "fractional" poses no impediment to interpreting the phrase. Common words are given their ordinary meaning if not otherwise defined in the relevant statute.[20] Courts consider the dictionary definition of words to discern the ordinary meaning.[21] They also may consider "how administrative agencies have used the words."[22] The ordinary meaning of "fractional" is "of, relating to, or being a fraction."[23] "Fraction" means "a numerical representation (as 3/4, 5/8, or 3.234) indicating the quotient of two numbers."[24] The ordinary meaning of "fractional," therefore, supports a conclusion that when an employee works only part of a month, that fractional month is counted.

The phrase "months, including fractional months" is not esoteric language. The plain meaning does not seem particularly elusive even without the help of a statutory definition of "month." The statute refers to months *for* which compensation was earned, not months of service. This suggests that the statute refers to any calendar month in which the employee earned some compensation, not the number of months of actual work the employee performed during some longer period. The statutory definition of "month" as a calendar month supports this reading. The phrase, "including fractional months" could arguably be intended to vary the definition of "month" in this context, but the language can still be read by directly substituting "calendar month" for "month": "the number of calendar months, including fractional calendar months, for which compensation was earned." There is nothing in this language that suggests the number of calendar months should be converted to any kind of "equivalent." Converting the number of months for

[18] AS 01.10.060(a)(3).

[19] *See* AS 01.10.040(b) (providing that the word "including," when used in a law, "shall be construed as though followed by the phrase 'but not limited to'").

[20] *Wilson v. Dep't of Corrections,* Slip Op. 5974, p. 6 (Alaska January 20, 2006).

[21] Id.

[22] Id. (citing *Grimm v. Wagoner, 11* P.3d 423, 430 & 433-34 (Alaska 2003) for the proposition that an agency's interpretation can provide useful, though not binding, guidance).

[23] Merriam-Webster's Collegiate Dictionary at p. 496 (11th ed. 2003); *compare* Webster's New World Dictionary at p. 552 (2nd ed. 1984) (defining "fractional" as "of or forming a fraction or fractions").

which compensation was earned to a full-time equivalent or to a part-time service credit equivalent, based on either a 30-hour or 37.5-hour week, results in a number that is different from what the plain language of the statute calls for.

Under the plain language of the statute, a "month" should be regarded as a calendar month. A fractional month should be regarded as the number of days in the month divided by the number of day the person was employed. When an employee person works from January 1 to January 31, fuller part-time, the number of months, including fractional month, for which compensation has been earned is one. When a person works from January 1 through April 15, full- or part-time, the number of months, including fractional months, for which compensation has been earned is 3 1/2. With language this plain, the evidence of contrary legislative intent would need to be extraordinary to construe the language any differently.

Ms. L. acknowledges the above construction as a possible reading of the statute, and addresses it as follows:

> One might argue that the language requires dividing by 12 months per year for a part time employee who earns compensation by working part-time in each of 12 months. This interpretation can readily be rejected for two reasons.
>
> First, mathematically, the result would be illogical and inequitable. If a retiree's halftime compensation was divided by 12 full months, then average compensation would be one-half of a full-time employee's average monthly compensation. When that factor was multiplied by years of service, which would also be one-half the years of a full-time employee, the resulting retirement benefit would be one-quarter of that received by a full-time employee. This would be an absurd result, and is not supported by legislative history. See, e.g. Exhibit 5. In this May 16, 1975 letter from Robert S. Gates, then Director of the Division of Retirement & Benefits to Senator Bill Ray, the Division urged language to "provide equity among members." He also stated that if "two permanent part-time employees would occupy a single position,. . . there would be no fiscal impact to the State of Alaska by virtue of these statutory changes." (emphasis in original). [Exhibit 5]. Clearly, if half-time employees received one-quarter of the retirement benefit of full-time employees working at the same rate of pay, the result would be inequitable. Moreover, the legislation would have had a positive fiscal impact on the State.[25]

[24] Merriam-Webster's Collegiate Dictionary at p. 496 (11"' ed. 2003).
[25] Ms. L.'s Motion for Summary Adjudication at 12.

Ms. L. is correct that if an employee worked half-time through her entire career, the retirement benefit would only be one-fourth that of a full-time employee. But she has not shown that this result is absurd and could not have been intended by the legislature.

First, it must be remembered that before the legislature extended PERS benefits to part-time employees in 1976, the part-time employee received no retirement benefit at all. In this light, it does not necessarily seem absurd that the legislature would extend to part-time employees a retirement benefit that is proportionally less than the employee's percentage of time worked. Second, part-time employees are not at the complete mercy of the formula. It hardly seems unlikely that towards the end of a 20- or 30-year career, part-time employees might choose to boost their retirement benefit by working full-time for three consecutive payroll years, a period of time that can be less than three full calendar years if the employee plans carefully. In this way, the employee's benefit will be calculated with the same "average monthly compensation" as a full-time employee. It is possible that back in 1976 the legislature's intent was to encourage its most experienced employees to provide the state with the benefit of all those accrued years of experience by switching to full-time employment as they approach retirement. Finally, it is possible that the legislature was acknowledging that there could be fixed costs for every employee, full- or part-time. For example, two half-time employees might both be entitled to the same medical benefits upon retirement as a full-time employee, making it necessary to reduce the retirement benefit for the half-time employees in order to result in no net fiscal impact.

Considering the complexity of projecting the effect of extending PERS benefits to part-time employees, and the simplicity and brevity of Director Gates' letter to Senator Ray, the letter does not significantly illuminate the intent of the legislature. As Ms. L. herself states, "it must be presumed that the legislature knew what it was doing."[26] The evidence of legislative intent submitted by the division is similarly unpersuasive.

The division submitted several hours of recordings of debate in the House HESS Committee in 1977. These debates contain little or no discussion regarding the workings and effects of the extension of PERS benefits to part-time employees. The division relies on its assertion that the legislature was aware that the division had been calculating benefits based on a 30-hour workweek. Even so, the recordings and other submittals contain no evidence that the legislature expected that service credit would be considered an element of "average monthly compensation." The submittals provide no evidence that the legislature considered the meaning of either "average monthly

compensation" or "number of months, including fractional months, for which compensation was earned" to mean anything other than the statutory definition of the former and the plain language meaning of the latter.

Ms. L. also states that "the second reason that the 12 month interpretation need not be considered is that the division has never applied it. The Division's method instead uses credited service, as compared to a 30 hour work week, and converts that credit to months."[27] Yet, Ms. L. rejects the calculation that the division has always used; that is, indeed, the point of her appeal. The division presents the same continuity argument in favor of its method of calculation the benefit, quoting *Bartley v. State, Dept. of Administration, Teacher's Retirement Board,* 110 P.3d 1254, 1261 (Alaska 2005):

> Although we generally rely on our independent judgment when we decide questions involving pure statutory inteipretation, we have recognized that an agency's interpretation of a law within its area of jurisdiction can help resolve lingering ambiguity, particularly when the agency's inteipretation is longstanding. In such cases we have suggested that precedent counsels restraint and directs us to look for "weighty reasons" before substituting our judgment for the agency's.

The gravity of the question in this case is significant, and the court's counsel of restraint in cases of longstanding agency inteipretation applies. But the *Bartley* court also stated,

> Of course, the plain meaning of a statute does not always control its interpretation, for we have recognized that legislative history can sometimes alter a statute's literal terms. But under Alaska's sliding-scale approach to statutory inteipretation, "the plainer the language of the statute, the more convincing contrary legislative history must be." [28]

The *Bartley* court went on to find that the plain meaning of the statute controlled in one issue, and it reversed the division even when the statute could arguably be interpreted in more than one way.[29]

The term "the number of months, including fractional months, for which compensation was earned" is subject to interpretation according to its plain meaning. There is not convincing evidence of legislative history showing that a particular different interpretation was intended.

C. Neither party is correct that the term "number of months, including fractional months, for which compensation was earned" requires a mathematical conversion.

[26] Ms. L.'s Motion for Summary Adjudication at 14.
[27] Ms. L.'s Motion for Summary Adjudication at 12.
[28] *Bartley* at 1258.
[29] *Bartley* at 1260.

Although they arrive at the point by different methods, the parties agree on the correct number of months to attribute to full-time employees. Both parties agree that a full-time employee who works through an entire calendar year would have earned compensation for twelve months. The dispute arises when one is calculating the number of months, including fractional months, for which compensation was earned" when an employee works part-time. Both parties advocate converting months and fractional months to some other unit: the division, to a unit derived from credited service, and Ms. L., to a unit calculated as a product of the number of calendar months and the fraction of time (e.g., half time, two thirds time) the employee worked per week. The problem with both approaches is that each one assumes that "months, including fractional months" must be converted to something else. Following is the methodology advocated by each party.

The division advocates the method it has been using since PERS benefits were extended to part-time employees. To calculate "the number of months, including fractional months, for which compensation was earned" the division divides the number of hours the employee actually worked in the period (typically three years) over the number of hours that would have been worked in the same period by an employee working 30 hours per week. Under this method, a part-time employee will have worked a substantially lower "number of months, including fractional months" than a full-time employee during the same calendar period.

The division's method incorporates the method by which it calculates service credit. Although years of service credit and "average monthly compensation" are different parts of the equation for calculating a monthly retirement benefit, the division's method of calculating average monthly compensation for part-time employees incorporates service credit to derive an average monthly compensation "equivalent." Therefore, in order to understand how the division arrives at its figure for average monthly compensation for part-time employees, it is necessary to digress long enough to examine the division's method of calculating service credit, which is disputed in this case.

According to AS 39.35.680(10), "'credited service' means the number of years, including fractional years, recognized for computing benefits that may be due from the plan." The statute does not provide any more detailed guidance as to how to determine the number of years that should be "recognized for computing benefits that may be due from the plan," particularly in the case of part-time employees.

The number of hours that full-time PERS members are required to work every week varies. State workers typically work 37.5 hours per week, while some members in other governmental

units, such as boroughs and municipalities, might work 40 or 42 hours per week. Some ferry system employees are on duty more than 80 hours per week. The legislature has defined a "permanent full-time" employee as one occupying a permanent position that regularly requires working 30 hours or more per week.[30] A "permanent part-time" employee is one who is occupying a permanent position that regularly requires working at least 15 hours per week but less than 30.[31] When calculating service credit, "a permanent part-time employee of the state receives credited service on a pro rata basis to that which would have been earned as a permanent full-time employee."[32]

Because the definition of a "full-time" employee includes any employee working at least 30 hours per week, the division compares the actual number of hours an employee works to 30 hours per week to determine how much service credit the employee is entitled to. The division does not consider the number of hours defined as "full-time" in the employee's job description or contract. Therefore, regardless of what the employer considers full-time, an employee who works fifteen hours per week receives service credit for half-time work, and an employee who works 20 hours per week receives service credit for two-thirds-time work. In one year, a fifteen-hour-per-week employee receives service credit for six months, and the twenty-hour-per-week employee receives service credit for eight months, even if the normal full-time work week for these employees is 37.5, 40, or 42 hours per week. A state employee who worked a full year for 18.75 hours per week, half of a normal 37.5 hour week, would receive service credit for .625 years, not for one half of a year.

Ms. L. does nor challenge the division's method of calculating service credit, though she suggests it is not the only possible method the division could use. She submits that the division could, for example, calculate service credit for part-time employees by comparing their actual hours worked to the number of hours required for their particular jobs to be full-time. By this method, a state employee working half of a 37.5-hour workweek for a year would receive half of a year's service credit. Ms. L. observes that the division's method could arguably be seen as a bit of a windfall for employees who have accrued many years of part-time service, but she also notes that the legislature did not provide explicit instructions for calculating service credit. Ms. L. correctly argues, however, that there is no provision in the statute that requires the use of service credit as a factor in calculating "average monthly compensation."

[30] AS 39.35.680(31).
[31] AS 39.35.680(32).
[32] AS 39.35.300(b).

Incorporating the concept of the 30-hour full-time workweek into the calculation of Average Monthly Compensation reduces the number of "months, including fractional months" that an employee worked during a period, and thereby inflates the Average Monthly Compensation. Using a full calendar year as an example, an employee working 30 hours per week for 52 weeks would work a total of 1,560 hours. Therefore, the division divides the number of hours the employee actually worked in the year by 1,560 and multiplies the resulting ratio by 12 to determine an "equivalent" to the number of months the employee worked during the year. For example, an employee averaging 25 hours per week would have worked a total of 1300 hours in a year. The ratio to full time is 1300/1560, or 0.833333. Multiplying this number by 12 results in 9.99999. Therefore, by the division's calculations, after a full year the "number of months, including fractional months, for which compensation was earned" by a 25-hour-per-week employee was 9.9999. This employee's "average monthly compensation" for that year would be calculated by dividing the amount of compensation he earned in the full twelve months of the year by 9.999999, even though the employee had earned compensation in each of the twelve months in the year.[33]

Ms. L. advocates two alternative methods for calculating the denominator of the "average monthly compensation" fraction for part-time employees. First, Ms. L. argues that "the number of months, including fractional months, for which compensation was earned" should be calculated by first determining how many months were in the period being considered, and then multiplying that number by the fraction of time a part-time employee was working per week. Thus, if a state worker with a normal full-time work week of 37.5 hours worked for an average of 18.75 hours per week for one year, the 12-month period would be multiplied by 18.75/37.5, or 1/2, resulting in a conclusion that the employee worked for six months during a twelve-month period. The interesting result of this calculation is that for part-time workers the denominator is reduced proportionately to the numerator, which is the amount of money earned during the period. Thus, in the example above, in one year the employee would be considered to have worked six months, and the employee's salary would be one-half of a full-time employee's. The part-time employee, therefore, would have the same "average monthly compensation" as a full-time employee.

Ms. L. acknowledges this result, and argues that it is consistent with the language and intent of the statute. She asserts that because the reduced time of service to the state by part-time workers is accounted for by the reduction in credited service, also reducing average monthly

[33] A single calendar year is used here to illustrate the division's methodology; the definition of "average monthly compensation" states that the period would never be one calendar year, but rather the three consecutive payroll years

compensation would doubly penalize part-time workers. Ms. L. asserts that the point of "average monthly compensation" is to capture the highest rate of pay the employee earned and incorporate it into the benefit formula. The "rate" that Ms. L. advocates capturing with average monthly compensation is actually a function of the employee's average ***hourly*** compensation. That conversion to an hourly rate is contrary to the statutory requirement that average ***monthly*** compensation be used.

In the alternative, Ms. L. argues that if credited service is used to determine the "number of months, including fractional months, for which compensation was earned" the credited service should not be based on a comparison of hours worked to a 30-hour week. Ms. L. argues that the compensation in the numerator is based on pay for the actual number of hours compared to the number of hours that would constitute full-time employment. As a salaried part-time employee, Ms. L^Jfwas paid a certain fraction of what she would have been paid if she had worked 37.5 hours per week. When the amount of time she is credited for in the denominator is expressed as a fraction of a 30-hour week, the resulting Average Monthly Compensation is substantially less than it would be if the time component in the numerator and denominator were both calculated as percentages of the same full-time week. Use of this calculation is Ms. **L**.'s preferred result.

The first method advocated by Ms. L. would greatly increase her monthly retirement benefit, as her Average Monthly Compensation for the time she was a part-time employee would be the same as for a full-time employee. The second method would result in a lower monthly benefit, but it would still be a larger benefit than what the division has arrived at by calculating the numerator as a percentage of pay for a 37.5 hour week and the denominator as a percentage of a 30-hour week.

While none of the methods advocated by the parties appear to comply with the plain language of the statute, Ms. L . has not demonstrated that the plain meaning of the statute or the legislative intent favors her construction over the division's.

IV. Conclusion

The phrase "months, including fractional months," as used in the definition of "average monthly compensation" in AS 39.35.680(4) does not require conversion of actual calendar months and fractions thereof to something else. Though her appeal raises questions about whether the division's decision to use a credited service-derived equivalent for "months, including fractional months" is defensible under the plain meaning of AS 39.35.680(4), Ms. L. has not met her

that yield the highest compensation for the period.

burden of showing that her proposed alternative method of calculating her retirement benefit comports with the law.

Because Ms. L. has not established that her retirement benefits should be calculated as she proposes, this decision on summary adjudication of the statutory interpretation issue does not reach the question whether the division's interpretation of AS 39.35.680(4) should have been reduced to a regulation. This decision also expresses no opinion on whether the division should revisit its long-standing practice of construing AS 39.35.680(4) using the credited service-derived equivalent or, if it did so, whether it (1) could alter that practice as applied to members of the PERS system with vested rights or (2) could alter the practice without a statutory change or adoption of a regulation.

V. Order

The decision of the Division of Retirement and Benefits to reject Ms. L.'s proposed method of calculating her retirement benefit is AFFIRMED.

DATED this 6th day of April, 2006.

By: DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 26th day of April, 2006.

By: DALE WHITNEY
Administrative Law Judge

The undersigned certifies that this dale an exact copy of the foregoing was provided to the following individuals:

Case Parties
4/26/06